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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214086
Party	Plaintiff Starbuzz Tobacco Inc.
Correspondence Address	Martin Jerisat Starbuzz Tobacco, Inc. 10871 Forbes Ave Garden Grove, CA 92843 UNITED STATES martin@starbuzztobacco.com
Submission	Motion for Default Judgment
Filer's Name	Martin Jerisat
Filer's e-mail	martin@starbuzztobacco.com
Signature	/Martin Jerisat/
Date	02/04/2014
Attachments	Motion to vacate extension of time and entry of default.pdf(68680 bytes ) Ex. A.pdf(116943 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STARBUZZ TOBACCO, INC.  
Plaintiff,

vs.

Phillip Melnick  
Defendant.

Opposition No. 91214086

**MOTION TO VACATE ORDER GRANTING EXTENSION OF TIME AND ENTRY OF  
DEFAULT**

Opposer, Starbuzz Tobacco, Inc., moves the board to vacate its order [D.E.5] granting extension of time to answer because Opposer did not consent to any extension of time.

**FACTUAL BACKGROUND**

1. On December 18, 2013, Opposer filed an opposition to the registration of the mark MYST by defendant based on the likelihood of confusion of Opposer's trademarks BLUE MIST, CITRUS MIST, PEACH MIST and TROPICAL MIST.
2. On January 27, 2014, Defendant called the undersigned counsel requesting an extension to answer. No consent to any extension was ever provided to Defendant.
3. On January 28, 2014, Defendant filed an alleged stipulation for an extension of time for Defendant to answer falsely stating that Defendant secured the consent of all other parties.
4. Opposer sent an electronic mail to Defendant objecting to Defendant's false statement that Opposer consented to the extension of time, attached as Ex. A.

WHEREFORE, Opposer moves to vacate the extension order and for entry of default pursuant to Fed. R. Civ. P. 55(a) because Defendant has not answered or filed a proper motion for extension to answer.

Respectfully submitted

/Martin Jerisat/  
Martin Jerisat

**CERTIFICATE OF SERVICE**

I certify that a copy of this Motion is being served via United States Mail on February 4, 2014, to the following:

Mr. Thomas M. Wilentz, Esq.

Thomas M. Wilentz, PLLC

75 South Broadway 4<sup>th</sup> Floor

White Plains, NY 10601

And via electronic email to Philipmelnick@aol.com.

/Martin Jerisat/

In a message dated 1/27/2014 8:19:24 P.M. Eastern Standard

Time, [martin@starbuzztobacco.com](mailto:martin@starbuzztobacco.com) writes:

Dear Mr. Melnick:

I received a copy of your extension motion. As you well know, you have asked us for an extension and we have not responded to you. Accordingly, your representation that we have agreed to an extension is not accurate. However, we are willing to consider an extension offer if you would send us a proposed settlement by end of today.

Regards,

Martin E. Jerisat, BChE, J.D., LL.M.

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 USC 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This communication may contain confidential and privileged material for the sole use of the intended recipient and receipt by anyone other than the intended recipient does not constitute a loss of the confidential or privileged nature of the communication. Any review or distribution by others is strictly prohibited. If you are not the intended recipient, please contact the sender by return electronic mail and delete all copies of this communication.

[PhilipMelnick@aol.com](mailto:PhilipMelnick@aol.com) , 1/27/2014 4:14 PM:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding.</b>	91214086
<b>Applicant</b>	Defendant philip melnick
<b>Other Party</b>	Plaintiff Starbuzz Tobacco Inc.
<b>Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?</b>	No

## **Motion for an Extension of Answer or Discovery or Trial Periods With Consent**

The Defendant's Time to Answer is currently set to close on 03/28/2014. philip melnick requests that such date be extended for 90 days, or until 06/26/2014, and that all subsequent dates be reset accordingly.

<b>Time to Answer :</b>	06/26/2014
<b>Deadline for Discovery Conference :</b>	07/26/2014
<b>Discovery Opens :</b>	07/26/2014
<b>Initial Disclosures Due :</b>	08/25/2014
<b>Expert Disclosure Due :</b>	12/23/2014
<b>Discovery Closes :</b>	01/22/2015
<b>Plaintiff's Pretrial Disclosures :</b>	03/08/2015
<b>Plaintiff's 30-day Trial Period Ends :</b>	04/22/2015
<b>Defendant's Pretrial Disclosures :</b>	05/07/2015
<b>Defendant's 30-day Trial Period Ends :</b>	06/21/2015
<b>Plaintiff's Rebuttal Disclosures :</b>	07/06/2015
<b>Plaintiff's 15-day Rebuttal Period Ends :</b>	08/05/2015

The grounds for this request are as follows:

- *Parties are engaged in settlement discussions*

philip melnick has secured the express consent of all other parties to this proceeding for the extension and resetting of dates requested herein.

philip melnick has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

## **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Respectfully submitted,  
/Philip Melnick/  
Philip Melnick  
[philipmelnick@aol.com](mailto:philipmelnick@aol.com)  
[martin@starbuzztobacco.com](mailto:martin@starbuzztobacco.com)  
01/27/2014